IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7007 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DL SHARMA - Petitioner
Versus
DS SHUKLA, AND OR HIS SUCCESOR IN OFFICE & 1 - Respondents

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Appearance :
MR AK CLERK for Petitioner : 1,
RULE UNSERVED for Respondent : 1,
MR PURVISH J MALKAN for Respondent : 1,
NOTICE SERVED for Respondent : 2,
RULE SERVED for Respondent : 2,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/12/2007

ORAL JUDGMENT

1. The petitioner under Article 226 of the Constitution of India has challenged the impugned orders dated 29.09.1999 passed by the Commandant, CISF Unit, ONGC, Mumbai, order dated 13.07.2000 passed by the Deputy Inspector General (West Zone) and order dated 14.02.2001 passed by the Inspector General (South and Western Zone) as a result whereof, the petitioner was reduced to the lowest scale of Constable for a period of 5 years with effect from the date of his rejoining duty on reinstatement and it was ordered that he would not earn any increments of pay during the period of reduction and on expiry of this period, the reduction would have the effect of postponing his future increments in pay and also to treat the intervening period of the petitioner from the date of removal from service to the date of reinstatement to service as DIES NON under the provisions of Rule 49-A of the CISF Rules, 1969 and not to pay any pay and allowances for the said period to the petitioner, on the ground that this orders issued as a result of inquiry, which had been vitiated on account of gross violation of principles of natural justice and therefore, the resultant penalty orders deserve to be quashed and set aside.

2. The facts in brief deserve to be stated as under.

3. The petitioner-Constable CISF Unit, ONGC, Mumbai was served with chargesheet vide Memorandum dated 11.12.1998 for four incidents of misconduct mentioned therein. The petitioner replied to the Memorandum denying the chargesheet vide communication dated 23.3.1999. The concerned Disciplinary authority

appointed Inquiry Officer vide order dated 16.2.1999. Due to transfer of the said officer, the inquiry was assigned to some other officer on 31.5.1999. The inquiry was conducted and the report was submitted. The Inquiry Officer after detailed inquiry held that except charge No. 4, all other charges were not proved. The Disciplinary Authority under his communication dated 30.7.1999 forwarded copy of the Inquiry Officer's report to the delinquent informing him that he partially agreed with the findings of the Inquiry Officer and he called upon the petitioner to submit his representation thereon. The petitioner submitted his representation. The Disciplinary Authority did not accept the same and imposed punishment of removal from service vide order dated 29.9.1999. The petitioner preferred Appeal challenging the said order of punishment of removal from service to the Appellate Authority, who partly allowed the appeal of the petitioner and reduced the punishment from removal of the service to that of the placing the petitioner to lowest scale of Constable for a period of 5 years with effect from the date of his rejoining duty on reinstatement and it was ordered that he would not earn any increments of pay during the period of reduction and on expiry of this period, the reduction would have the effect of postponing his future increments in pay and also to treat the intervening period of the petitioner from the date of removal from service to the date of reinstatement to service as DIES NON under the provisions of Rule 49-A of the CISF Rules, 1969 and not to pay any pay and allowances for the said period to the petitioner. The petitioner was afforded an opportunity of being heard

against the said order, which he availed and ultimately, the Inspector General, SWS vide order dated 14.2.2001 confirmed the order of the Appellate Authority. Being aggrieved with the said punishment, the petitioner preferred this petition under Article 226 of the Constitution of India.

4. Shri Clerk, learned counsel appearing for the petitioner has submitted that the Disciplinary Proceedings are not conduced in accordance with law and there is a breach of principles of natural justice and therefore, the Disciplinary Proceedings as well as order of punishment deserve to be quashed and set aside. Shri Clerk has submitted that as per the Central Industrial Security Force Rules, 1969, especially Rule 34(10), the Disciplinary Authority was duty bound to record his finding on each of the charge and give reasoning for his disagreement with the findings of the Inquiry Authority. Shri Clerk has also invited this Court's attention to the communication dated 30.7.1999 issued by the Disciplinary Authority, whereunder, the copy of the Inquiry Officer's report had been sent to the petitioner and submitted that the communication does not contain any findings and/or even tentative findings of the Disciplinary Authority nor does it contain any reasoning as to why he did not agree with the findings of the Inquiry Officer. Shri Clerk further submitted that the Disciplinary Authority not only did not specifically mention the tentative finding and/or reasoning for disagreement with the findings of the Inquiry Officer, it also did not clearly communicate to the petitioner that he did not agree with the findings of the Inquiry Officer in

unequivocal terms so as to afford an opportunity to the petitioner for justifying the finding of the Inquiry Officer. Shri Clerk has submitted that law on this issue is by now well settled. He has relied upon the decision of the Apex Court in case of **PUNJAB NATIONAL BANK AND OTHERS VS. KUNJ BEHARI MISRA** reported in (1998) 7 SCC p.84 and submitted that the Disciplinary Authority was under an obligation to comply with the principles of natural justice which dictates that when the Disciplinary Authority is not in agreement with the findings recorded by the Inquiry Officer, then, he has to record reasons for not agreeing with the finding of the Inquiry Officer and those reasons are to be communicated to the delinquent concerned. This requirement even if it is not mentioned in the Rules are to be read into the concerned Disciplinary Rules. Shri Clerk has further relied upon the decision of the Apex Court in case of ***P.D. AGRAWAL VS STATE BANK OF INDIA AND OTHERS,*** reported in (2006)8 SCC p.776 and submitted that ratio of the Apex Court's decision in case of Punjab National Bank and other (supra) has been reiterated and followed and the Apex Court held that delinquent is not even under an obligation to prove any prejudice because of non-supply of the reasoning for disagreement of the Inquiry Officer's finding by the Disciplinary Authority. The said proposition of law is fortified by another decision of the Apex Court in case of ***STATE BANK OF INDIA AND OTHERS VS. K.P.NARAYANAN KUTTY,*** reported in (2003) 2 SCC p.449. Shri Clerk has submitted that the petitioner did raise contention before the Appellate Authority as well as second Appellate Authority in respect of finding of the

Disciplinary Authority and therefore, even on that count, it can be said that the finding of the appellate authority is bad as before the Inquiry Officer, except one, all the charges were not proved and therefore, this has vitiated the Disciplinary Proceedings and therefore, the Disciplinary Proceedings and resultant order of punishment deserve to be quashed and set aside.

5. Shri Malkan, learned counsel appearing for the respondents submitted that 1969 Rules would govern the impugned orders. The charged officer i.e the petitioner was in fact intimated under Disciplinary Authority's communication dated 30.7.1999 that the Disciplinary Authority did not entirely agree with the findings of the Inquiry Officer and therefore, it can well be said that there was due compliance with the provisions of the Rules. Shri Malkan has submitted that the principles of natural justice cannot be stretched too far. Shri Malkan has submitted that the Apex Court in case of ***CANARA BANK VS. V.K.AWASTHY,*** reported in (2005) 6 SCC p.321 held that the principles of natural justice are to be applied and any breach thereof, if complained, are to be looked into depending upon the facts and circumstances of the case of each case as the principles of natural justice are to be applied to the given facts and circumstances of the case. Shri Malkan has submitted that before the Apex Court in that case, the Court did accept the plea of the Management that in absence of any prejudice shown or pleaded, the breach of principles of natural justice would be of no avail to the delinquent concerned. Shri Malkan has submitted that the impugned

order therefore, deserves to be upheld and in fact especially when the Appellate Authority has considered the attending circumstances and reduced the punishment of removal from service into that of reducing the scale of the petitioner to the lowest scale of the Constable, this Court may not interfere under Article 226 of the Constitution of India. Shri Malkan has submitted that the petitioner has in fact not pleaded any prejudice because of non-supply of the reasoning of disagreement with the finding of the I.O by the Disciplinary Authority before both the Appellate Authorities and therefore, in view of the decision of the Apex Court in case of Canara Bank (Supra), no interference is called for under Article 226 of the Constitution of India. Shri Malkan without prejudice to the aforesaid contentions, alternatively, submitted that in case the Court is inclined to accept the petition, then also, liberty be reserved to the respondents to initiate inquiry from the stage when Disciplinary Authority communicated report of the I.O to the delinquent as the petitioner's contention with regard to disciplinary proceedings vitiated is only on account of non-supply of the reasoning by the Disciplinary Authority for disagreeing with the findings of the I.O.

6. Heard Mr. Clerk, learned counsel for the petitioner and Mr. Malkan, learned counsel for the respondent at length and perused the papers.

7. The relevant extract of the rules in question deserves to be set out as under :

Rule 31 of Central Industrial Security Force Rules, 1969 :

NATURE OF PENALTIES: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a member of the Force, namely :-

(a) dismissal;

(b) removal;

(c) compulsory retirement

(d) reduction to a lower class or grade or rank or to a lower time scale or to a lower stage in the time-scale of pay;

(e) withholding of increment or promotion;

(f) removal from any office of distinction or deprivation of special emolument;

(g) fine to any amount not exceeding 7 days' pay;

(h) censure.”.....

Rule 34 : Procedure for imposing major penalties:-

xxx xxx xxx xxx
xxx xxx xxx xxx

(9)The disciplinary authority shall, if it is not the Inquiry Authority referred to above, consider the record of the inquiry and record its findings on each charged.

(10)(i) If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (a) to (h) of rule 31 should be imposed, it shall pass appropriate orders in the case.

(ii) If it is of opinion that any of the penalties

specified in clauses (a) to (d) of rule 31 should be imposed it shall -

(a) furnish the member so charged with a copy of report of the Inquiry Authority referred to above and, where the disciplinary authority is not the said Inquiry Authority, a statement of its findings together with brief reasons for disagreement if any, with the findings of the said Inquiry Authority be also furnished to that member;

(b) give the member so charged a notice stating the action proposed to be taken in respect of him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action; and

(c) consider the representation, if any, made by the member so charged in response to the notice under sub-clause (b) and determine what penalty, if any, should be imposed on the member so charged, and pass appropriate orders in the case."

(11)Orders passed by by the disciplinary authority shall be communicated to the member of the Force who shall also be supplied with a copy of the report of the Inquiring Authority referred to above and, where the disciplinary authority is not the said Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, along with the findings of the said Inquiring Authority shall also be supplied to that member unless they have already been supplied to him."

Thus, from the foregoing departmental rules, it emerged that the Inquiry Authority if not the Disciplinary Authority himself then has to submit to the Disciplinary Authority the record of the inquiry containing the chargesheet, written statement of defense, oral evidence in respect of inquiry, documentary evidence and the orders and his report. Sub-rule (9) of Rule 34 provides in general that the Disciplinary Authority has to consider the record of inquiry and record its finding on each charge. Now, sub-rule (1) of Rule 34 elaborately deals with procedure as to how the Disciplinary Authority has to consider the record of the inquiry along with report of the Inquiry Officer. Rule 34(10)(i) again in general provides that the Disciplinary Authority may impose penalty specified under Rule 31 perusing the record of the proceedings. However, clause (ii) of Sub-clause (10) of Rule 34 makes it incumbent upon the Disciplinary Authority to follow the procedure laid down thereunder for imposing any punishment prescribed under Clause (a) to (d) of Rule 31. It deserves to be noted at this stage that the penalty in question originally imposed by the Disciplinary Authority upon the petitioner was that of removal from service covered by Rule 31(b), a major punishment, the subsequent revision of the penalty and substituting it with that of reduction of lower scale of constable for a period of 5 years with effect from the date of his rejoining duty on reinstatement was also one of the major penalty prescribed under Rule 31(d) of the Rules.

8. Therefore, the duty was cast upon the Disciplinary Authority to adhere to the clear provisions of Sub-clause

(ii) of Clause-10 of Rule 34 of the Rules for imposing any major penalty as it is stated hereinabove, the original penalty of removal from service was admittedly one of the major penalty and the subsequent revision thereof and substituting it with that of reduction of lower scale of constable for a period of 5 years with effect from the date of his rejoining duty on reinstatement is also one of the major penalty and therefore the respondents especially the disciplinary authority was under an obligation to strictly follow the procedure laid down under the sub clause(ii) of Clause 10 of Rule 34. The Disciplinary Authority is duty bound to furnish the member so charged with a copy of the report of the Inquiry Authority when the Disciplinary Authority is not the inquiry authority, a statement of its findings together with brief reasons for disagreement if any with the findings of the said inquiry authority to the charged officers and also give the charged officer a notice stating the action proposed to be taken in respect of him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action and after considering the representation, if any from the charged member, determine the penalty to be imposed. Thus, provision of Sub-clause (ii) of Clause-10 of Rule 34 in unequivocal terms provides for furnishing the charge officer with brief reasons for disagreement with the findings of the Inquiry Officer if the Inquiry Authority is other than the Disciplinary Authority. In the instant case, the communication dated 30.7.1999 issued by the Disciplinary Authority reads as under :

"NO.V-15014/CISF/ONGC/DISC/DLS/99/5635
dated 30 July, 1999.

To,
No.801020450, Const, ... through Coy.CommdrNhava
D.L.Sharma,
CISF Unit ONGC Mumbai,
Nhava Contingent.

Subject: FORWARDING OF ENQUIRY REPORT: REG.

I partially agree with the findings of the enquiry report findings, however, on receipt of representation against the enquiry report decision will be taken. A copy of enquiry report is enclosed herewith. Your representation if any should reach the undersigned within 14 days of receipt of the enquiry report.

Acknowledge receipt.

Sd/-
COMMANDANT
CISF UNIT ONGC MUMBAI-16"

The question arises as to whether can this communication be said to be a due compliance with mandatory provisions of Sub-clause (ii) of Clause 10 of Rule 34. The answer would be clearly **"NO"**. The communication is not clear enough to indicate to the charged officer that enquiry Officer is not agreeing with the major finding of the inquiry authority. It deserves to be noted at this stage that in the instant case, the Inquiry Authority has exonerated the petitioner of the three charges and that the disciplinary authority did not agree with any of the findings of I.O. wherein the petitioner was exonerated. When there was disagreement with the findings of the inquiry officer, it is necessary to inform the charged officer in unequivocal terms that Disciplinary Authority

was not agreeing or it was disagreeing with the finding of the Inquiry Officer. The duty of the Disciplinary Authority does not rest here. In fact, the Disciplinary Authority was under an obligation to record its own finding on each of the charge and brief reasons for his disagreement with findings of the inquiry officer and communicate the said brief reasoning to the charged officer in due compliance with the provisions of Sub-clause (ii) of Clause 10 of Rule 34 of the Rules.

9. The decision of the Apex Court in case of ***PUNJAB NATIONAL BANK AND OTHERS VS. KUNJ BEHARI MISRA,*** reported in (1998) 7 SCC 84 would on in all four applicable to the facts and circumstances of the present case. The main contention of the respondent employees before the Apex Court and in the writ petition was that the Disciplinary Authority, who had chosen to disagree with the conclusion arrived at by the Inquiry Officer could not have came to adverse conclusion without giving them an opportunity of being heard and the order passed against them were therefore liable to be quashed. The Apex Court examined Rule 7 of the Punjab National Bank Employees (Disciplinary Appeal) Rules, 1977 and especially Rule 7(2) of the Punjab National Bank Officers Employees' (Discipline and Appeal) Regulations, 1977 observed that though the Rule did not specifically provide for supplying to the charged officer the Disciplinary Authority's reasons for disagreement with the finding of Inquiry Officer, it is required to be read into those rules. The following observation of the Apex Court deserves to be set out as under:

"Para-18*: Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case.*

Para-19 *: The result of the aforesaid discussion*

would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer.

***Para-20**. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants. While agreeing with the decision in Ram Kishan's case, we are of the opinion that the contrary view expressed in S. S. Koshal and M. C. Saxena's cases do not lay down the correct law."*

10.In another case, the Apex Court relying upon the decision

in case of Punjab National Bank (supra) held that even prejudice is not to be shown to have been caused because of non-supply of the reasons for disagreement with Inquiry Officer's finding. In case of ***STATE BANK OF INDIA AND OTHERS vs. K.P.NARAYANAN KUTTY***, reported in (2003) 2 SCC 449, the Apex Court in para-6 observed as under:

> ***"para-6:*** *It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of India V. Vishwa Mohan. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned counsel invited out attention to para 9 of the said judgment. As is evident from the said paragraph, this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to*

the delinquent officer. In para 19 of the judgment in Punjab National Bank case extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) [Rule 50(3)(ii) of the State Bank of India (Supervising Staff) Services Rules, is identical in terms applicable to the present case] and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer, we find it difficult to accept the contention advanced on behalf of the appellants, that unless it is shown that some prejudice was caused to the respondent, the order of dismissal cold not be set aside by the High Court."

11. Shri Clerk is right in submitting that even in 2006 also, there is no change in the law and he has relied upon the decision in case of ***P.D. AGRAWAL v. STATE BANK OF INDIA AND OTHERS,*** reported in (2006) 8 SCC 776. The Apex Court also in case of P.D. Agrawal(supra) considered the charge No. 2, wherein, the serious objection regarding violation of principles of natural justice was raised, was severed from the other charges and punishment of dismissal was sustained only on the basis of the sustainable charges and not charge No. 2.

12. Thus, by now the provisions of law is clear that even if the concerned Disciplinary Rules do not provide for supplying the reasons for disagreement by the Disciplinary Authority with the findings of the Inquiry

Officer to the charged officer, the said requirement is to be read into the concerned Rules. In fact, in the present set of applicable rules i.e the Disciplinary Rules of 1969, there is a specific provision in Rule 34(10) lays down in unequivocal terms that the Disciplinary Authority if disagree with the findings of the Inquiry Officer, has to record his findings with brief reasons and supply the same to the charged officer and invite his objection to that. It is one of the fundamental principles of natural justice that person has to be informed about the material against him before the same is being used for passing any adverse orders against him. The brief reasoning for disagreement with the Inquiry Officer's favourable findings, would constitute material against the delinquent and delinquent is therefore required to be informed about the same and is required to be afforded an opportunity of being heard on that material before the Disciplinary Authority passes an order of penalty taking into considering that material i.e his reasons for disagreeing with the Inquiry Officer's finding in favour of the delinquent officer. The Apex Court in case of Canara Bank (Supra) in Para 10 held as under:

> *Para-10: "The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principles is what is commonly*

known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the 'Magna Carta'. The classic exposition of Sir Edward Coke of natural justice requires to 'vocate interrogate and adjudicate'. In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principles was thus stated:

"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "Where are thou has thou not eaten of the tree whereof I commanded tree though should not eat".

Since then the principle has been chiselled,

honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."
(emphasis provided)

13. Thus, even in the decision cited by Shri Malkan for the respondent, the Apex Court has acknowledged and accepted the requirement of supplying material and informing the delinquent and affording an opportunity of being heard before using the same for passing order of penalty.

14. This Court is unable to accept the submission of the learned counsel Shri Malkan in respect of requirement of pleading prejudice by the delinquent due to non-supply of the reasoning by the Disciplinary Authority. The Apex Court in case of Canara Bank (supra) has held that in a given case, how the principles of natural justice are applied is to be looked into. The proposition of law as sought to be envisaged by Shri Malkan cannot be said to be available from the said decision as it deserves to be noted that in that case, the plea of non-supplying the reasoning and prejudice was accepted but in the instant case, the Rule itself caste an obligation upon the Disciplinary Authority for recording reasons for his disagreement with I.O.'s finding and Disciplinary Authority did not supply the same to the charged officer. Especially when the Apex Court has in two cases in unequivocal terms held that prejudice is not required to be even pleaded as non-supply per-se would amount to say

'prejudice'. It can well be said that those decisions will be squarely and on all four well applicable to the facts and circumstances of the case on hand. Therefore, in view of that also, this Court has no hesitation in come to the conclusion that because of the aforesaid serious breach of principles of natural justice, the Disciplinary Proceedings stood vitiated. As the Disciplinary Proceedings itself were vitiated, the resultant order of punishment also stands vitiated and therefore, both Disciplinary Proceedings and order of punishment are required to be quashed and set aside.

15. The record and proceedings indicate that the Appellate Authority as well as Second Appellate Authority or Revisional Authority has accepted the findings of the Disciplinary Authority in respect of all the charges, though the Inquiry Officer exonerated the petitioner of three charges and therefore, on the same reasoning it can well be said that the orders passed by the Appellate Authority as well as Second Appellate Authority or Revisional Authority also deserves to be quashed and set aside.

16. This Court is also not inclined to accept the submission of Shri Malkan with regard to reserve liberty to the respondents for starting de-novo proceedings from the point of supplying copy of the report of the I.O to the delinquent. This Court is also of the considered view that looking to the passage of time, change in circumstances and even the punishment and the charges leveled, it would be not in the interest of justice to reserve such liberty to the respondents for holding de-novo

proceedings from the point of supplying copy of the report of I.O to the delinquent. Because of passage of time, the delinquent will also not be in a position to now make his submission with appropriate effectiveness as the record is very old and the proceedings are of the year 1998. In a given case, such liberty could not be reserved but looking to the peculiar facts and circumstances of the case and looking to the decision of the then Appellate Authority treating the punishment of removal to be very harsh, this Court is of the view that reserving liberty would entail futile exercise, which does not warrant in the facts and circumstances of the present case.

17. In the result, the petition is allowed. The disciplinary proceedings and impugned order dated 14.2.2001 passed by the Disciplinary Authority are hereby quashed and set aside. The respondents are hereby directed to treat the petitioner as if the impugned orders did not exist and pay him all the consequential benefits accruing therefrom as soon as possible preferably within a period of 30 days from the receipt of the writ of this order. Rule is made absolute. No costs.

(S.R.BRAHMBHATT, J.)

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